

MAIL STOP AMENDMENT

Serial No. 10/590,803

Page 45 of 47

REMARKS

Claims 1-24 are pending in this application. Claims 25-31 have been canceled without prejudice or disclaimer. Claim 22 has been amended to correct a typographical error. Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

No new matter has been added.

In view of the remarks set forth herein, further and favorable consideration is respectfully requested.

1. ***At pages 3-9 of the Official Action, claims 26, 29 and 31 have been rejected under 35 U.S.C. § 112, first paragraph for lack of enablement.***

The Examiner acknowledges that the specification provides *in vitro* data showing that the presently claimed compounds are inhibitors of PDE4. However, the Examiner asserts that the specification is not enabling for the treatment of diabetes mellitus with the elected species or any other claimed compound.

Claims 26, 29 and 31 have been canceled without prejudice or disclaimer, thereby rendering this rejection moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

MAIL STOP AMENDMENT

Serial No. 10/590,803

Page 46 of 47

2. ***At page 9 of the Official Action, claims 1-24 and 26 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claim 1 of copending U.S. Patent Application No. 11/884,924.***

The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the copending U.S. Patent Application No. 11/884,924 claims the hydrochloride salt of the presently elected compound.

Applicants note that claim 26 has been canceled without prejudice or disclaimer, thereby rendering this rejection of claim 26 moot.

Applicants respectfully traverse this provisional rejection of claims 1-24. In particular, Applicants note that U.S. Patent Application No. 11/884,924 has an effective U.S. filing date of August 23, 2007. The present application has an earlier effective U.S. filing date of August 25, 2006. Pursuant to **MPEP § 804**, if a provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of two pending applications, the examiner should withdraw that rejection. Applicants note that upon entry of this amendment, this provisional nonstatutory obviousness-type double patenting rejection will be the only rejection remaining in the present application, which is the earlier filed of the two pending applications. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this provisional rejection of claims 1-24.

MAIL STOP AMENDMENT

Serial No. 10/590,803

Page 47 of 47

CONCLUSION

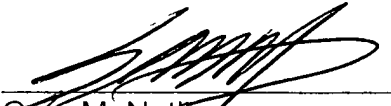
Based upon the above remarks and amendment, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections and allow all pending claims in this application. Favorable action with an early allowance of the claims pending in this application is earnestly solicited. The Examiner is welcomed to telephone the undersigned attorney if he has any questions or comments.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,
THE NATH LAW GROUP

Date: March 25, 2009

THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Phone: (703)548-6284



Gary M. Nath
Registration No. 26,965
Sheldon M. McGee
Registration No. 50,454
Customer No. 34375